

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.¹

PROMESA Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

**MOTION OF ASSURED GUARANTY CORP., ASSURED GUARANTY MUNICIPAL
CORP., AND AMBAC ASSURANCE CORPORATION TO EXTEND THE ELECTION
DEADLINE IN THE SOLICITATION PROCEDURES ORDER**

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's Federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 04780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Court Judge Laura Taylor Swain:

Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (together, “Assured”) and Ambac Assurance Corporation (“Ambac,” and collectively with Assured, “Movants”) hereby submit this motion (the “Motion”) to extend the “Election Deadline” as defined in the Solicitation Procedures Order² to **October 18, 2021, at 5:00 PM (Atlantic Standard Time)** so that the Election Deadline will coincide with the Voting Deadline, as originally provided in the Solicitation Procedures Order. Movants respectfully submit as follows:

1. The Court’s August 2, 2021 Solicitation Procedures Order established two crucial deadlines for parties in interest to make decisions with respect to the currently pending *Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (ECF No. 17627, the “Plan”).

2. First, for creditors eligible to cast votes to accept or reject the Plan, the Solicitation Procedures Order established a “Voting Deadline,” which is the “deadline for [such] creditors to accept or reject the plan.”³

² See Order (I) Approving Disclosure Statement, (II) Fixing Voting Record Date, (III) Approving Confirmation Hearing Notice And Confirmation Schedule, (IV) Approving Solicitation Packages And Distribution Procedures, (V) Approving Forms Of ballots, And Voting And Election Procedures, (VI) Approving Notice Of Non-Voting Status, (VII) Fixing Voting, Election, And Confirmation Deadlines, And (VIII) Approving Vote Tabulation Procedures (ECF No. 17639, the “Solicitation Procedures Order”). All capitalized terms used in this Motion but not defined herein shall have the meanings ascribed to them in the Solicitation Procedures Order or the Plan, as applicable. Unless otherwise indicated, all references to ECF numbers in this Motion shall refer to the docket in Case Number 17-3283-LTS.

³ See Amended Joint Motion of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority for an Order (I) Approving Disclosure Statement, (II) Fixing Voting Record Date, (III) Approving Confirmation Hearing Notice and Confirmation Schedule, (IV) Approving Solicitation Packages and Distribution Procedures, (V) Approving Forms of Ballots, and Voting and Election Procedures, (VI) Approving Notice of Non-Voting Status, (VII) Fixing Voting, Election, and Confirmation Deadlines, and (VIII) Approving Vote Tabulation Procedures (ECF No. 16756, the “Solicitation Procedures Motion”) ¶ 25.i.

3. Second, for certain creditors who are not eligible to cast votes to accept or reject the Plan, but who instead are eligible to make certain elections with respect to the form of the distribution they will receive under the Plan, the Solicitation Procedures Order established an “Election Deadline,” which is the “deadline for making the distribution election for creditors eligible to elect the form of distribution under the Plan.” See Solicitation Procedures Motion ¶¶ 25.j.

4. The Solicitation Procedures Order originally set the Voting Deadline and the Election Deadline for the same date, namely October 4, 2021. See Solicitation Procedures Order ¶¶ 32-33. It made sense for the Voting Deadline to coincide with the Election Deadline, because creditors voting to accept or reject the Plan and creditors electing a form of distribution would largely be considering the same information, namely (i) the information contained in the Disclosure Statement, which was scheduled to be distributed approximately one month before both the Voting Deadline and the Election Deadline, and (ii) the information contained in the Plan Supplement, which is required to be filed “no . . . later than seven (7) days” before both the Voting Deadline and the Election Deadline.⁴ Creditors voting to accept or reject the Plan and creditors electing a form of distribution under the Plan should therefore have the same opportunity to examine both the Disclosure Statement and the Plan Supplement before making their respective decisions with respect to voting and/or elections.

5. On September 27, 2021, the Court entered an Order (ECF No. 18258, the “Voting Deadline Extension Order”) that extended the Voting Deadline “by fourteen (14) days, to

⁴ See Plan § 1.395, which provides that the Plan Supplement “shall be filed with the Clerk of the Title III Court as soon as practicable (but in no event later than seven (7) days) prior to the Ballot Date.” The “Ballot Date” is defined in the Plan to include both the Voting Deadline and the Election Deadline (see Plan § 1.110), meaning that the Plan Supplement must be filed at least 7 days prior to the Election Deadline.

and including October 18, 2021, at 5:00 p.m. (Atlantic Time).” See Voting Deadline Extension Order ¶ 2. The Voting Deadline Extension Order did not extend the Election Deadline. It provides that “[a]ll other deadlines in the Solicitation Procedures Order . . . shall remain in full force and effect, and shall not be affected by this order.” See id. ¶ 5. It therefore appears that the Election Deadline remains October 4, while the Voting Deadline has been extended to October 18.

6. To ensure that the Voting Deadline and the Election Deadline coincide, as intended in the Solicitation Procedures Order, Movants request that the Court clarify that the Election Deadline also is extended to October 18.

7. This extension will have no impact on the timing of plan confirmation, because the elections will not affect the voting process (and indeed would be completed on the same timetable). But if the Election Deadline were not extended, creditors required to make distribution elections may be prejudiced. The Oversight Board has indicated that, given the new Voting Deadline of October 18, the Oversight Board may file the Plan Supplement as late as October 11, *after* the current Election Deadline of October 4.⁵ This would mean that creditors are required to make elections without an opportunity to review the Plan Supplement.

8. As just one example, pursuant to Sections 75.1(b) and 75.5(a)-(b) of the Plan, bondholders whose bonds are insured by Assured are entitled to make one of two “Assured Bondholder Elections,” and bondholders insured by Ambac are entitled to choose between two forms of treatment. Under “Assured Bondholder Election 1,” such bondholders would “receive from Assured the applicable Acceleration Price on the Effective Date in full satisfaction and

⁵ See *Financial Oversight and Management Board for Puerto Rico’s (A) Response to Retiree Committee Motion to Extend Voting Deadline, UCC Joinder to Retiree Committee Motion, and Motion of Individual Bondholder for an Order Extending the Voting Deadline for Retail Investors, and (B) Cross-Motion to Modify Certain Deadlines in Solicitation Procedures Order and Confirmation Procedures Order* (ECF No. 18243, the “Oversight Board Response”) ¶ 6.

discharge of Assured's obligations with respect to such holder under the applicable Assured Insurance Policies." See Plan § 75.1(b)(i). Under "Assured Bondholder Election 2," such bondholders would "opt into a custodial trust . . . that will provide such Assured Insured Bondholder[s] with an interest in (A) the applicable Assured Insurance Policy and (B) certain Assured New Securities in accordance with terms acceptable to Assured." See id. § 75.1(b)(ii). Crucially, the Plan Supplement is expected to include a draft of the trust agreement governing the "custodial trust" that bondholders would be opting into under Assured Bondholder Election 2. Similarly, the "Ambac Non-Commutation Treatment" involves opting in to "the applicable Ambac Trust(s)," the "terms of [which] shall be set forth in a trust agreement or trust agreements which shall be filed as part of the Plan Supplement." Id. § 75.5(b)(i). Bondholders should have an opportunity to review the applicable custodial trust agreements before being required to make an election. As the Plan Supplement containing the relevant trust agreement may be filed as late as October 11, bondholders should not be required to make their election on October 4.

9. Movants have an interest in ensuring that their insured bondholders have sufficient information to make an informed election, in order to increase the likelihood that such bondholders will make an election that is mutually satisfactory to both the insured bondholders and the insurers.

10. In addition, in order to ensure that creditors entitled to make a distribution election under the Plan have sufficient notice of any extension of the Election Deadline, Prime Clerk LLC, as the Debtors' Balloting Agent, should be required to provide notice to such creditors of the extension of the Election Deadline by a means reasonably calculated to ensure that such creditors receive notice of the extension prior to the Election Deadline.

11. For all of these reasons, Movants respectfully request that the Court enter an order substantially in the form attached to this Motion as “Exhibit A”, extending the Election Deadline to October 18, 2021 and granting related relief.

[Remainder of Page Intentionally Omitted]

Dated: September 29, 2021
New York, New York

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CERTIFICATE OF SERVICE

I hereby certify that I filed this document electronically with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all parties of record in the captioned case.

At New York, New York, the 29th day of September, 2021.

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